

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**STIPULATED [PROPOSED]  
PROTECTIVE ORDER**

1. PURPOSES AND LIMITATIONS

1.1 Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order (“Order”).

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule

of Civil Procedure 26(c), including without limitation: (1) information protected pursuant to Federal Rule of Civil Procedure 5.2; (2) information protected by any federal, California, or other privacy statute, such as the California Right to Financial Privacy Act; and (3) information protected by an existing contractual obligation requiring the Designating Party to maintain the confidentiality of the information. Nothing in this paragraph shall preclude a Party from redacting personal information, including social security numbers or dates of birth, as required by governing law or contract or otherwise pursuant to the applicable policies of the Party.

2.3 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: extremely sensitive “Confidential Information or Items,” production of which on a “CONFIDENTIAL” basis to another Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel, as well as their support staff, including but not limited to attorneys, paralegals, secretaries, law clerks, and investigators.

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.6 Disclosure or Discovery Material: all items or information, including from any non-party, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation, along with his or her employees and support personnel, who has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this action.

2.8 House Counsel: attorneys who are employees of a Party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.9 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.10 Outside Counsel of Record: attorneys, as well as their support staff (including but not limited to paralegals, secretaries, law clerks, and investigators) who are not employees of a Party to this action but are retained by a Party to represent or advise a party to this action and (1) have appeared in this action on behalf of that party, (2) are affiliated with a law firm which has appeared on behalf of that Party, or (3) represented a Party in connection with the related Department of Justice Investigation.

2.11 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

3.1 The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (a) any information copied or extracted from Protected Material; (b) all copies, excerpts, summaries, or compilations of Protected Material; and (c) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

However, the protections conferred by this Stipulation and Order do not cover the following information: (i) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the

1 public record through trial or otherwise; (ii) any information known to the Receiving Party prior  
2 to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
3 obtained the information lawfully and under no obligation of confidentiality to the Designating  
4 Party; and (iii) any information obtained outside of litigation with the consent of the Producing  
5 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

6 3.2 Nothing in this Order shall prevent or restrict a Producing Party's own disclosure  
7 or use of its own Protected Material for any purpose.

8 3.3 Nothing in this Order shall be construed to prejudice any Party's right to use any  
9 Protected Material in court or in any court filing with the written consent of the Designating Party  
10 or by order of the Court.

11 3.4 This Order is without prejudice to the right of any Party to seek further or  
12 additional protection of any Discovery Material or to modify this Order in any way, including,  
13 without limitation, an order that certain matter not be produced at all.

14 3.5 Nothing in this Order shall be construed to prevent Counsel from advising their  
15 clients with respect to this case based in whole or in part upon Protected Materials, provided  
16 counsel does not disclose the Protected Material itself except as provided in this Order.

17 4. DURATION

18 4.1 Even after final disposition of this litigation, the confidentiality obligations  
19 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing  
20 or a court order otherwise directs. Final Disposition shall be deemed to be the later of (1)  
21 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final  
22 judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or  
23 reviews of this action, including the time limits for filing any motions or applications for  
24 extension of time pursuant to applicable law.

25 5. DESIGNATING PROTECTED MATERIAL

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
27 or Non-Party that designates information or items for protection under this Order must take care  
28 to limit any such designation to specific material that qualifies under this Order. If only a portion

1 or portions of material, documents, items, or oral or written communications qualify under this  
 2 Order, the Designating Party, to the extent practicable, shall designate only the portion or portions  
 3 for protection - so that other portions of the material, documents, items, or communications for  
 4 which protection is not warranted are not swept unjustifiably within the ambit of this Order.

5 5.2 A Designating Party may not designate as Confidential information that has been  
 6 shared with any other party, unless the Designating Party has a good faith belief that the other  
 7 party has a current statutory, regulatory, common law, contractual, or other obligation or right to  
 8 maintain the confidentiality of the information at issue. The foregoing sentence shall not be  
 9 construed to enlarge, diminish, or otherwise alter the criteria for determining whether such  
 10 information has been properly designated Confidential.

11 5.3 Mass or indiscriminate designations are prohibited. Designations that are shown to  
 12 be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily  
 13 encumber or retard the case development process or to impose unnecessary expenses and burdens  
 14 on other parties) expose the Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it designated  
 16 for protection do not qualify for protection at all or do not qualify for the level of protection  
 17 initially asserted, that Designating Party must within a reasonable time notify all other parties that  
 18 it is withdrawing the mistaken designation.

19 5.4 Manner and Timing of Designations. Except as otherwise provided in this Order  
 20 (see, e.g., second paragraph of section 5.2(a) and 5.2(b) below), or as otherwise stipulated or  
 21 ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be  
 22 clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,  
 25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
 26 Party affix the legend "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES  
 27 ONLY" to each page that contains protected material. A Party or Non-Party that makes original  
 28 documents or materials available for inspection need not designate them for protection until after

1 the inspecting Party has indicated which material it would like copied and produced. During the  
2 inspection and before the designation, all of the material made available for inspection shall be  
3 deemed "CONFIDENTIAL - ATTORNEYS' EYES ONLY." After the inspecting Party has  
4 identified the documents it wants copied and produced, the Producing Party must determine  
5 which documents, or portions thereof, qualify for protection under this Order. Then, before  
6 producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" or  
7 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" legend to each page that contains Protected  
8 Material. If only a portion or portions of the material on a page qualifies for protection, the  
9 Producing Party to the extent practicable shall identify the protected portion(s) and specify the  
10 level of protection being asserted.

11 (b) for testimony given in deposition, any party or testifying persons or entities  
12 may designate any portion of the testimony or exhibits "CONFIDENTIAL" or  
13 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" either on the record before the close of the  
14 deposition or in writing on or before the later of thirty (30) days after receipt of the final transcript  
15 or the date by which any review by the witness and corrections to the transcript are to be  
16 completed under Federal Rule of Civil Procedure 30. Only those portions of the testimony that  
17 are designated for protection shall be covered by the provisions of this Protective Order. If any  
18 portion of a videotaped deposition is designated, the original and all copies of any videocassette,  
19 videotape, DVD or other media container shall be labeled with the appropriate legend. Pending  
20 designation as set forth above, the entire transcript, including exhibits, shall be deemed  
21 "CONFIDENTIAL," unless exhibits or testimony are identified on the record during the  
22 deposition as "CONFIDENTIAL - ATTORNEYS' EYES ONLY," in which case the entire  
23 transcript, including exhibits shall be deemed "CONFIDENTIAL - ATTORNEYS' EYES  
24 ONLY" information. If no designation is made within the time period above, the transcript shall  
25 be considered not to contain any "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS'  
26 EYES ONLY" information.

27 Transcript pages containing Protected Material must be separately bound by the court  
28 reporter, who must affix to each such page the legend "CONFIDENTIAL" or "CONFIDENTIAL

1 - ATTORNEYS' EYES ONLY," as instructed by the Designating Party.

2 Any Protected Material that is used in the taking of a deposition shall remain subject to  
3 the provisions of this Order, along with the transcript pages and videotape of the deposition  
4 testimony dealing with such Protected Material. Counsel for any Producing Party shall have the  
5 right to exclude from oral depositions, other than the deponent and deponent's counsel any person  
6 who is not authorized by this Protective Order to receive or access Protected Material based on  
7 the designation of such Protected Material. Such right of exclusion shall be applicable only  
8 during periods of examination or testimony regarding such Protected Material.

9 (c) for all other information or tangible items, that the Producing Party affix in  
10 a prominent place on the exterior of the container or containers in which the information or item  
11 is stored the legend "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY."  
12 If only a portion or portions of the information or item warrant protection, the Producing Party, to  
13 the extent practicable, shall identify the protected portion(s) and specify the level of protection  
14 being asserted.

15 5.5 Inadvertent Failures to Designate. If a Producing Party discovers that  
16 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" information or items  
17 that it produced was not designated as Protected Material, or that it produced information or items  
18 that were designated as Protected Material but had designated it in the incorrect category, the  
19 Producing Party may notify all other Parties of the error and identify the affected information or  
20 items and their new designation or re-designation. Thereafter, the information or items so  
21 designated or re-designated will be treated as Protected Material. After providing such notice, the  
22 Producing Party shall provide re-labeled copies of the information or items to each Receiving  
23 Party reflecting the change in designation.

24 An inadvertent failure to designate qualified information or items does not, standing  
25 alone, waive the Designating Party's right to secure protection under this Order for such material.  
26 Upon correction of a designation, the Receiving Party must make reasonable efforts to assure that  
27 the material is treated in accordance with the provisions of this Order. Upon receiving the  
28 Protected Material with the correct confidentiality designation, the Receiving Parties shall return

1 or securely destroy, at the Receiving Parties' option, all Discovery Material reasonably accessible  
2 to the Receiving Party that was not designated properly. Unauthorized or inadvertent disclosure  
3 does not change the status of Discovery Material or waive the right to hold the disclosed  
4 document or information as Protected Material.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
7 confidentiality at any time. A Party does not waive its right to challenge a confidentiality  
8 designation by not challenging a designation promptly after the original designation is disclosed.

9 6.2 Meet and Confer. The Challenging Party shall initiate a designation of  
10 confidentiality challenge by providing written notice of each designation it is challenging and  
11 describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been  
12 made, the written notice must recite that the challenge to confidentiality is being made in  
13 accordance with this specific paragraph of the Protective Order. The parties shall attempt to  
14 resolve each challenge in good faith and must begin the process by conferring directly (in voice to  
15 voice dialogue; other forms of communication are not sufficient) within fourteen (14) days of the  
16 date of service of the written notice. In conferring, the Challenging Party must explain the basis  
17 for its belief that the confidentiality designation was not proper and must give the Designating  
18 Party a reasonable opportunity to review the designated material, to reconsider the circumstances,  
19 and, if no change in designation is offered, to explain the basis for the chosen designation.

20 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
21 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
22 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if  
23 applicable) within 45 days of the initial notice of challenge or within 14 days of the parties  
24 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.  
25 Each such motion must be accompanied by a competent declaration affirming that the movant has  
26 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by  
27 the Designating Party to make such a motion including the required declaration within 45 days (or  
28 14 days, if applicable) shall automatically waive the confidentiality designation for each



1 challenged designation. The parties may stipulate without court order to amend the time period  
 2 within which a motion shall be filed. In addition, the Challenging Party may file a motion  
 3 challenging a confidentiality designation at any time if there is good cause for doing so, including  
 4 a challenge to the designation of a deposition transcript or any portions thereof. Any motion  
 5 brought pursuant to this provision must be accompanied by a competent declaration affirming that  
 6 the movant has complied with the meet and confer requirements imposed by the preceding  
 7 paragraph.

8         6.4     The burden of persuasion in any such challenge proceeding shall be on the  
 9 Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass  
 10 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party  
 11 to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
 12 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
 13 material in question the level of protection to which it is entitled under the Producing Party's  
 14 designation until the court rules on the challenge.

## 15     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

16         7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed  
 17 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
 18 defending, or attempting to settle this litigation or related appellate proceeding, and not for any  
 19 other purpose whatsoever. Such Protected Material may be disclosed only to the categories of  
 20 persons and under the conditions described in this Order. When the litigation has been  
 21 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
 22 DISPOSITION).

23         Protected Material must be stored and maintained by a Receiving Party at a location and  
 24 in a secure manner that ensures that access is limited to the persons authorized under this Order.

25         7.2     Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
 26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 27 disclose any information or item designated "CONFIDENTIAL" only to:  
 28

1 (a) the Receiving Party's Outside Counsel of Record in this action, including  
2 attorneys who are principals of, employed by, or working for said Outside Counsel of Record  
3 who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto as  
4 Exhibit A, as well as non-attorney employees and contractors of said Outside Counsel of Record  
5 to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) current or former officers, directors, and current employees (including  
7 House Counsel) of the Receiving Party, to whom disclosure is reasonably necessary for this  
8 litigation, and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
9 A), as well as their immediate paralegals and staff;

10 (c) Experts (as defined in this Order) retained by the Receiving Party to assist  
11 in this action, provided that disclosure is only to the extent reasonably necessary to perform such  
12 work and provided that (i) such Expert has signed the "Acknowledgment and Agreement to Be  
13 Bound" (Exhibit A); and (ii) such Expert is not a current officer, director, or employee of a Party  
14 or of a competitor of a Party, nor is anticipated at the time of retention to become an officer,  
15 director, or employee of a Party or of a competitor of a Party;

16 (d) the court and its personnel;

17 (e) court reporters, stenographers, and videographers retained to record  
18 testimony in this action and their staff, professional jury or trial consultants, and Professional  
19 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the  
20 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (f) during their testimony or preparation for their testimony, witnesses in the  
22 action to whom disclosure is reasonably necessary. Such witnesses shall be bound by the terms  
23 of this stipulated order and shall be given a copy of it at the outset of a deposition. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
25 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
26 under this Stipulated Protective Order.

27 (g) the author or recipient of a document containing the information or a  
28 custodian or other person who otherwise possessed or knew the information;

1 (h) mock jurors who have signed the “Acknowledgement and Agreement to Be  
2 Bound” (Exhibit A);

3 (i) any mediator who is assigned to hear this matter, and his or her staff, who  
4 have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A);

5 (j) any other person with the prior written consent of the Producing Party.

6 7.3 Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
7 Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a  
8 Receiving Party may disclose any information or item designated “CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY” only to the following:

10 (a) Persons designated in Paragraphs 7.2 (d), (e), (f), (g), (h) and (i);

11 (b) the Receiving Party’s Outside Counsel of Record in this action, including  
12 attorneys who are principals of, employed by, or working for said Outside Counsel of Record,  
13 provided that such Outside Counsel is not involved in competitive decision-making, as defined by  
14 *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3 (Fed. Cir. 1984), on behalf of a Party or a  
15 competitor of a Party, to whom it is reasonably necessary to disclose the information for this  
16 litigation and who have signed the “Acknowledgement and Agreement to Be Bound” that is  
17 attached hereto as Exhibit A, as well as non-attorney employees of said Outside Counsel of  
18 Record to whom it is reasonably necessary to disclose the information for this litigation;

19 (c) no more than five (5) House Counsel of the Receiving Party, to whom  
20 disclosure is reasonably necessary for this case, who are permitted by the Producing Party to have  
21 access to such materials, and who have signed the “Acknowledgement and Agreement to Be  
22 Bound” that is attached hereto as Exhibit A, as well as their immediate paralegals and staff;

23 (d) Experts (as defined in this Order) retained by the Receiving Party to assist  
24 in this action, provided that disclosure is only to the extent reasonably necessary to perform such  
25 work, and provided that (i) such Expert is not a current officer, director, or employee of a Party or  
26 of a competitor of a Party, nor anticipated at the time of retention to become an officer, director,  
27 or employee of a Party or of a competitor to a Party; (ii) such Expert is not involved in  
28 competitive decision-making, as defined by *U.S. Steel v. United States*, 730 F.2d 1465, 1468 n.3

(Fed. Cir. 1984) on behalf of a Party or a competitor of a Party; and (iii) such Expert has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

Such Experts shall not be permitted to provide advice, analysis, or recommendations to a competitor of the Designating Party that concern the matters at issue in the above-entitled litigation, while the above-entitled litigation is pending, absent consent of the Designating Party. Consent of the Designating Party shall not be withheld absent compelling ground. Experts are hereby specifically advised that their written work product which contains or discloses the substance of “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information is subject to all the provisions of this Protective Order. Outside Counsel of Record disclosing “CONFIDENTIAL” and “CONFIDENTIAL- ATTORNEYS’ EYES ONLY” information to Experts shall be responsible for obtaining the executed undertakings in advance of such disclosure and also shall retain the original executed copy of said undertaking; and

(e) any other person with the prior written consent of the Producing Party.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION OR GOVERNMENT INVESTIGATION

8.1 If a Party is served with a document request, investigatory demand for documents, subpoena or a court order (“Document Demand”) issued in other litigation or government investigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” that Party must:

(a) within three business days notify in writing the Designating Party;

(b) promptly notify in writing the party who caused the Document Demand to issue in the other litigation that some or all of the material covered by the Document Demand is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party timely seeks a protective order, the Party served with the Document Demand shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or

1 order issued, unless the Party has obtained the Designating Party's permission. The Designating  
 2 Party shall bear the burden and expense of seeking protection in that court of its Protected  
 3 Material.

4 (d) Nothing in these provisions should be construed as authorizing or requiring  
 5 a Receiving Party in this action to disobey a lawful order of any court.

6 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
 7 LITIGATION

8 9.1 The terms of this Order are applicable to information produced by a Non-Party in  
 9 this action and designated as "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES  
 10 ONLY." Such information produced by Non-Parties in connection with this litigation is  
 11 protected by the remedies and relief provided by this Order. Nothing in these provisions should  
 12 be construed as prohibiting a Non-Party from seeking additional protections.

13 9.2 In the event that a Party is required, by a valid discovery request, to produce a  
 14 Non-Party's confidential information in its possession or control, and the Party is subject to an  
 15 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
 16 Party shall:

17 (a) notify in writing the Requesting Party and the Non-Party that some or all of  
 18 the information requested is subject to a confidentiality agreement with a Nonparty;

19 (b) provide the Non-Party with a copy of the Order in this litigation, and the  
 20 relevant discovery request(s).

21 9.3 If the Non-Party fails to seek a protective order from this court within fourteen  
 22 (14) days of receiving the notice and accompanying information, the Receiving Party may  
 23 produce the Non-Party's confidential information responsive to the discovery request. If the  
 24 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
 25 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
 26 before a determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall  
 27 bear the burden and expense of seeking protection in this court of its Protected Material.

28 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
*Footnote continued on next page*

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve all unauthorized copies of the Protected Material; (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order; and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

11.1 If information subject to a claim of attorney-client privilege, work product protection or other privilege or protection is inadvertently produced, such production shall not constitute automatic waiver of such privilege or protection pursuant to Federal Rules of Evidence 502. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in

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*Footnote continued from previous page*

rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality.

1 the public record in this action any Protected Material. A Party that seeks to file under seal any  
2 Protected Material must comply with Civil Local Rule 79-5.

3 12.4 Termination of Matter and Retention of Jurisdiction. The Parties agree that the  
4 terms of this Protective Order shall survive and remain in effect after the Final Disposition of the  
5 above-captioned matter. The Court shall retain jurisdiction after Final Disposition of this matter  
6 to hear and resolve any disputes arising out of this Protective Order.

7 12.5 Successors. This Order shall be binding upon the Parties hereto, their attorneys,  
8 and their successors, executors, personal representatives, administrators, legal representatives,  
9 assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any  
10 persons or organizations over which they have direct control.

11 12.6 Burdens of Proof. Notwithstanding anything to the contrary above, nothing in this  
12 Protective Order shall be construed to change the burdens of proof or legal standards applicable in  
13 disputes regarding whether particular Discovery Material is confidential, which level of  
14 confidentiality is appropriate, whether disclosure should be restricted, and if so, what restrictions  
15 should apply.

16 12.7 Modification by Court. This Order is subject to further court order based upon  
17 public policy or other considerations, and the Court may modify this Order sua sponte in the  
18 interests of justice. The United States District Court for the Northern District of California is  
19 responsible for the interpretation and enforcement of this Order. All disputes concerning  
20 Protected Material, however designated, produced under the protection of this Order shall be  
21 resolved by the United States District Court for the Northern District of California.

22 12.8 Discovery Rules Remain Unchanged. Identification of any individual pursuant to  
23 this Order does not make that individual available for deposition or any other form of discovery  
24 outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the Local Rules  
25 for the United States District Court for the Northern District of California, or the Court's own  
26 orders.

13. FINAL DISPOSITION.

13.1 Within 60 days after the final disposition of this action, as defined in Section 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (a) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed; and (b) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, the Parties are not required to delete information that may reside on their respective electronic back-up systems that are over-written in the normal course of business. Notwithstanding the foregoing, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: November 30, 2011 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

By: /s/ Brendan P. Glackin  
Brendan P. Glackin

Interim Lead Counsel for Plaintiff Class

Dated: November 30, 2011 O'MELVENY & MYERS LLP

By: /s/ Michael F. Tubach  
Michael F. Tubach

Attorneys for Defendant APPLE INC.



1 Dated: November 30, 2011 KEKER & VAN NEST LLP  
2 By: /s/ Daniel Purcell  
3 Daniel Purcell  
4 Attorneys for Defendant LUCASFILM LTD.  
5 Dated: November 30, 2011 JONES DAY  
6 By: /s/ David C. Kiernan  
7 David C. Kiernan  
8 Attorneys for Defendant ADOBE SYSTEMS INC.  
9 Dated: November 30, 2011 MAYER BROWN  
10 By: /s/ Lee H. Rubin  
11 Lee H. Rubin  
12 Attorneys for Defendant GOOGLE INC.  
13 Dated: November 30, 2011 BINGHAM McCUTCHEN LLP  
14 By: /s/ Frank Hinman  
15 Frank Hinman  
16 Attorneys for Defendant INTEL CORPORATION  
17 Dated: November 30, 2011 JONES DAY  
18 By: /s/ Robert A. Mittelstaedt  
19 Robert A. Mittelstaedt  
20 Attorneys for Defendant INTUIT INC.  
21 Dated: November 30, 2011 COVINGTON & BURLING LLP  
22 By: /s/ Emily Johnson Henn  
23 Emily Johnson Henn  
24 Attorneys for Defendant PIXAR  
25  
26  
27  
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**Filer's Attestation**

Pursuant to General Order No. 45, § X(B), I attest under penalty of perjury that concurrence in the filing of the document has been obtained from all the signatories.

Dated: November 30, 2011

/s/ Dean M. Harvey  
Dean M. Harvey

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2011

By:

\_\_\_\_\_  
UNITED STATES DISTRICT/  
MAGISTRATE JUDGE

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**EXHIBIT A ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Northern District of California on \_\_\_\_\_  
[date] in the case of \_\_\_\_\_ *In re: High-Tech Employee*  
*Antitrust Litig.*, Master Docket No. 11-CV-2509-LHK. I agree to comply with and to be bound  
by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure  
to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly  
promise that I will not disclose in any manner any information or item that is subject to this  
Stipulated Protective Order (“Order”) to any person or entity except in strict compliance with the  
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the  
Northern District of California for the purpose of enforcing the terms of this Stipulated Protective  
Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_